TABLE OF CONTENTS

Page

I. There Is No Real Dispute Among the Parties as to the Government's Substantial Need for Improved Service 4

II. Appellees' Claims of Prejudice Are Wholly Without Merit 11

III. Appellees' Concept of an "Indivisible" Jurisdiction Is Inapposite in This Case 14

Conclusion 19

Appendix A—Summary of Applications Filed by Certain Appellees With Defense Department Support

CITATIONS

CASES:

Arrow Transp. Co. v. *United States,* 176 F. Supp. 411 (N.D. Ala. 1959), *aff'd,* 361 U.S. 353 ..... 17, 18

Atchison, T. & S.F. Ry. v. *United States,* 231 F. Supp. 422 (N.D. Ill. 1964) 17

Ford Motor Co. v. *NLRB,* 305 U.S. 364 (1939) 16

Mississippi Valley Barge Line Co. v. *United States,* 292 U.S. 282 (1934) 16

Oklahoma Natural Gas Co. v. *Russell,* 261 U.S. 290 (1923) 14, 16

West Indian Fruit & S.S. Co. v. *Seatrain Lines,* 170 F.2d 775 (2d Cir. 1948), *cert. denied,* 336 U.S. 908 (1949) 14

Wrather-Alvarez Broadcasting, Inc. v. *FCC,* 248 F.2d 646 (D.C. Cir. 1957) 15

Page

STATUTES AND REGULATIONS:

Interstate Commerce Act

Section 203(b)(5), 49 U.S.C. § 303(b)(5) 2

Section 210a, 49 U.S.C. § 310a 12

49 C.F.R. § 1131.4(b)(2) 13

MISCELLANEOUS:

2 Davis, Administrative Law Treatise § 11.06 (1958) .. 18

33 Fed. Reg. 18461 13

ICC Form Op-OR-9, "Application for Motor Carrier Certificate or Permit," 2 CCH Fed. Carr. Rep. ¶ 24078 5

S. Rep. No. 1152, 90th Cong., 2d Sess. (1968) 2

S. 752, 90th Cong., 1st Sess. (1957) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 369

AMERICAN FARM LINES, *Appellant*,

v.

BLACK BALL FREIGHT SERVICE, ET AL., *Appellees*.

No. 382

INTERSTATE COMMERCE COMMISSION, *Appellant*,

v.

BLACK BALL FREIGHT SERVICE, ET AL., *Appellees*.

On Appeal From the United States District Court for the Western District of Washington

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REPLY BRIEF OF APPELLANT AMERICAN FARM LINES

The briefs filed by the carrier appellees[1] clearly demonstrate a fundamental divergence of view between these appellees and appellant American Farm

[1] Four separate briefs were filed by these appellees. The Brief of Appellees Consolidated Freightways Corp., et al. will be cited "CF Br."; the Brief of Certain Motor Carrier Appellees, filed on behalf of the American Trucking Associations, Inc. and 23 carriers will be cited "ATA Br." The briefs filed by the Railroad Appellees and by Dealers Transit, Inc. and United Transports, Inc. are not cited in this Reply Brief.

Lines ("AFL") as to the nature and significance of this case.

As appellees paint the background, AFL is simply an unrepentant renegade, "masquerading" as a legitimate farm cooperative, and operating in the "gray area" of "unregulated, illegal and destructive" motor transportation (ATA Br., p. 5). Its operations, they contend, have "posed a most serious threat" to the system of regulated common carriers. (CF Br., p. 5) One senses from reading these briefs that the regulated carriers view AFL's application to become a regulated common carrier as the ultimate impertinence.

In AFL's view, the service it has provided to the Government within the scope of its exemption has not only offered a measure of very healthy competition for the regulated carriers in both rates and services, but has demonstrated the capacity of the motor transportation system for substantially improved performance. The Department of Defense concurs with this view. (A. 14a)[2] On the record before the ICC, AFC was clearly entitled to be certificated.

Of course, this Court is called upon to decide this case on the basis of the rather narrow procedural issues presented on these appeals, and not upon the

[2] The Department of Defense strongly opposed the 1968 legislation amending 203(b)(5) of the Interstate Commerce Act to restrict the nonmember transportation operations of agricultural cooperatives. In commenting on the original version of S. 752, which would have limited nonmember operations solely to the carriage of "farm-related" freight, the Department said that such a severe restriction "would remove an effective element of price and service competition and thus deprive the Department of Defense of a source of efficient and low-cost transportation for freight shipments. As a result, budgetary requirements of the Department of Defense would be increased." S. Rep. No. 1152, 90th Cong., 2d Sess. 29 (1968).

parties' characterizations of one another. There is no issue before the Court as to the lawfulness of AFL's prior operations or its fitness to hold common carrier authority, and the Court need not consider whether AFL poses a "serious threat" to the regulated carriers or whether additional competition would be desirable among carriers serving the Government. These issues will all be argued in the pending ICC proceeding involving AFL's application for permanent authority, and will be decided by the ICC in that case on the basis of an extensive hearing record.[3]

There is a danger, however, that argument on the procedural issues in these appeals will obscure the fact that the conflict over AFL's temporary authority is simply a small part of the larger conflict relating to the permanent entry of AFL, as a regulated carrier, into the Government market. This fact is particularly important to keep in mind in weighing appellees' arguments that they were not fairly informed of the complaints against their service and that the superiority of AFL's direct single-line service over the joint-line regular route service of existing carriers was not proved and is only "theoretically possible." (CF Br., p. 49) As we shall demonstrate below, when these arguments are viewed in their broader context, and measured against flatly inconsistent statements made to the ICC by many of these same carriers, it is clear beyond question that there is no genuine dispute among the parties either as to the Government's need for the type

[3] The hearing on AFL's application for permanent authority was completed January 15, 1970. The transcript of the 12-day hearing covers 1,809 pages. One hundred fifty-six documentary exhibits and the testimony of 68 witnesses were presented by the 67 parties that appeared.

of service AFL has been providing or as to the inability of the regulated carriers to meet that need under their present operating authorities. The only dispute is whether a new competitor—specifically AFL—should be certificated either temporarily or permanently to serve this need.

I. There Is No Real Dispute Among the Parties as to the Government's Substantial Need for Improved Service

Appellees' principal attack on the substance of the evidence offered in support of AFL's application reduces to the contention that the Defense Department's 22-page sworn statement of support contained too many generalities as to the Department's needs and not enough specific information about "service failures" by existing carriers. The somewhat condescending conclusion appellees draw from their analysis of the evidence is that the Defense Department's support of AFL was merely "an undifferentiated plea for more efficient overall service." (CF Br., p. 47)[4] Appellees dismiss as being only "theoretically possible"

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[4] This conclusion is directly inconsistent with the more forthright conclusions these same appellees drew in their submissions to the ICC. The Defense Department's statements to the ICC made clear that it was seeking not simply more "efficient" service, but also *lower cost* service. (A. 14a, 204a) Indeed, appellees were explicitly informed by the Department that one reason for its support for AFL was that AFL's service had "resulted in significantly reduced rates." (A. 140a)

Consolidated Freightways and Tri-State Motor Transit Co., two of the largest transcontinental munitions carriers, as well as other carriers, expressly interpreted the Department's support as motivated by a desire for lower rates, and plainly viewed AFL as a threat to the existing rate structure. (A. 54a-55a, 58a-59a, 124a) Notwithstanding these carriers' claims of "destructive" competition from AFL, the record is noticeably devoid of any evidence to support such conclusory charges.

AFL's observation that direct single-line service will obviously be faster than circuitous multiple-line service. In any event, they suggest, the difference in speed "is not to be measured in large blocks of time." (CF Br., p. 49)

AFL respectfully submits that these representations by appellees to this Court are utterly without merit, and are directly contradicted by representations these same carriers have made to the Interstate Commerce Commission in proceedings arising out of this very conflict.

As the American Trucking Associations, Inc., has informed this Court, after the Defense Department supported AFL's application over 125 regulated carriers filed applications for similar "improved operating rights," many with precisely the same type of support from the Department of Defense.[5] Each of these applications was filed under the sworn representation "that the application is made in good faith, with the intention of presenting evidence in support thereof in every particular."[6] It must be assumed, in view of these representations, that these carriers had no ulterior or improper motives in filing such applications and that each in fact believed that a need existed for the authority it sought.

Typical of the applications that were triggered by AFL's application is that of appellee Consolidated

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[5] Motion to Affirm, p. 8 n. 22. According to recent testimony by a Defense Department witness in AFL's permanent authority case, as of January 1970 more than 170 carriers have requested the Department's support for such applications.

[6] ICC Form OP-OR-9, "Application for Motor Carrier Certificate or Permit", p. 4. 2 CCH Fed. Carr. Rep. ¶ 24078, at 24551.

Freightways Corp. of Delaware, in Docket No. MC 42487 (Sub-No. 705). By this application, Consolidated sought authority to provide direct single-line carriage of explosives between all points in 41 states (including all states covered by AFL's application) so long as the freight was moving to or from a U. S. military installation. In support of Consolidated, the Defense Department made substantially the same representations as it did in AFL's case as to its need for the faster transit times that can be achieved through direct single-line service.

The most significant representations, however, were made by Mr. Don L. Roark, General Manager of the Division established by Consolidated to specialize in Government traffic.[7] While Consolidated has argued to this Court that it is only "theoretically possible" for direct single-line service to move commodities faster than joint-line regular-route service (CF Br., pp. 49-50), Mr. Roark, on behalf of Consolidated, expressed a quite different view to the ICC. For example, he points out that substantial delays may be experienced in joint-line operations:

> Wherever it is necessary to effect a trailer interchange, the possibility and even probability of delay arises because of the difficulties of coordinating supply and availability of tractor equipment between two carriers. . . . We find that this frequently happens in trailer interchange arrangements, despite the efforts of participating carriers

[7] Verified Statement of Don L. Roark, Docket No. MC 42487 (Sub-No. 705) (hereinafter cited "Roark Statement"). This statement, as well as a large number of applications and statements by other carriers, were admitted in evidence in AFL's permanent application case.

> to cooperate and coordinate their activities. In addition to this type of delay, there is also time required for inspection of equipment and preparation of required inspection reports, equipment receipts, et cetera. If our inspection indicates that the equipment is not roadworthy and in proper condition for transportation of explosives, there can be still further delays in seeing that necessary repairs are effected.[8]

The direct inconsistency in Consolidated's representations concerning circuitous routing is equally glaring. In their brief in this Court they deny that transit times are seriously affected by circuitous routings because "between major shipping points there are generally only a few highways that are feasible alternative routes, and generally regular route carriers are authorized to move over those highways (*see, e.g.*, A. 335a)"[9] (CF Br., p. 50.) Yet in support of its own application, Consolidated represented to the ICC that

> If our Arrowhead Division had direct authority from the origins of explosives traffic such as McAlester, Oklahoma to points of destination such as Bangor and Port Chicago, in my opinion, we could considerably shorten transit times involved. We could operate over more direct routes, and perform a more efficient service in all respects.[10]

In support of this contention, Mr. Roark cited an exhibit sponsored by another Consolidated witness show-

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[8] Roark Statement, pp. 13-14.

[9] Page 335a of the Appendix has nothing at all to do with the proposition for which it is cited.

[10] Roark Statement, p. 15.

ing that a grant of direct single-line authority to Consolidated

> would mean potential annual savings in excess of 10,000,000 ton-miles on explosives transportation performed for the Department of Defense.[11]

He then set forth specific examples of Consolidated's present regular routings that involved circuity ranging from 15 to 28 percent in excess of "the most direct available routes."[12]

Finally, in a crescendo of enthusiasm, Mr. Roark testified as follows:[13]

> We at CF are aware of the needs expressed by the DOD for fast, efficient service in the movement of ammunition and explosives in the nation's defense effort. . . . The nature of this specialized traffic makes irregular route type authority essential to the best service performance. The nature of the traffic, its peculiar service demands, and considerations of safety all make direct single-carrier service and avoidance of interchange important.
>
> By shortening our routes of travel and eliminating time-consuming, expensive interchange, we not only will be able to operate at lower cost but will be able to keep our equipment on line and

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[11] *Id.* The exhibit referred to by Mr. Roark showed that Consolidated could realize mileage reductions ranging up to 633 miles. Verified Statement of Edward V. Taylor, App. N, Docket No. MC 42487 (Sub-No. 705). The Defense Department's statement in support of Consolidated showed that the savings in transit times that could be achieved would range up to 36 hours. Verified Statement of George William Baude, App. 1, Docket No. MC 42487 (Sub-No. 705).

[12] *Id.*, pp. 15-16.

[13] *Id.*, pp. 16-17.

> maintain closer control over maintenance of that equipment. We could improve our overall transit time performance by eliminating many hours of delay at interchange points and many hours, even days, of road time. It is for these reasons that we ask the Commission to grant us the authority we seek.

Statements comparable to those of Consolidated have been made to the ICC in other application proceedings by a large number of the appellees in this case.[14] Appellee IML Freight, Inc., for example, seeking direct single-line authority throughout a 26-state area (including most of the states covered by AFL's application), catalogued as "some of the benefits that will inure to the shipping public": avoidance of "delays at interline interchange points;" shortening of transit times "by utilizing direct shorter routes;" and "savings and economies to the carriers which can ultimately be passed on to the shipping public." Such savings, IML stated, "will enable us to compete with the Farm Co-Ops presently being used by the Government . . . ."[15]

Finally, while appellees quibble with AFL's observation that it is a "rather obvious proposition that direct single-line service is faster and safer . . . than circuitous multiple line service" (CF Br., p. 49), appellee Navajo Freight Lines, Inc., in sworn testimony filed with the ICC only one week prior to the noting

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[14] In Appendix A hereto we have identified a number of applications by appellee carriers that have been supported by the Defense Department on grounds substantially identical to those in this case. This listing is not intended to be exhaustive.

[15] Verified Statement of Lynn Davis, General Traffic Manager of IML Freight, Inc. at pp. 8-9, filed in Docket MC-33641 (Sub-No. 80).

of probable jurisdiction by this Court in this case, made exactly the same observation:[16]

> We believe it is self evident that an irregular route single-line service would accomplish substantial savings in delivery time and mileage traversed. The result in savings would be of benefit to Navajo, to the Department of Defense and to this nation's transportation system generally. In addition, the factor of public safety would be enhanced.

We respectfully submit that these statements, which are grossly inconsistent with appellees' position here, clearly show (a) that there is no real dispute among these parties as to the Government's need for direct single-line service, and (b) that such service is not generally available from existing carriers.[17] Statements to this Court by appellees professing ignorance of the Government's need—such as ATA's assertion that "Existing motor carriers know of no service problems justifying the grant of authority made" (ATA Br., p. 15)—are somewhat less than candid. The existing motor carriers have clearly recognized the Government's need for the direct single-line service that AFL has been providing. In their broad-scale effort to prevent AFL's entry into this market they have, in effect, waived their objections based upon lack

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[16] Verified Statement of David N. Inwood, Vice President—Traffic, Navajo Freight Lines, Inc., pp. 5-6, Docket No. MC-76032 (Sub-No. 240).

[17] It is significant that none of the briefs filed by appellees discusses AFL's exhibits analyzing the routings available to the Government from the leading munitions carriers. These exhibits, which are referred to at page 38 of AFL's main brief, showed that single-line service was available on only 4% of more than 2,000 available routes.

of need. They have elected to defend against AFL by attempting to persuade the ICC to expand their own authorities rather than certificating a new carrier.[18]

II. Appellees' Claims of Prejudice Are Wholly Without Merit

In wounded and indignant tones, appellees argue to this Court that they were seriously prejudiced because the Defense Department did not give specific details concerning "service failures." Had specifics been given, they suggest, they would have been able to show that the Department does not in fact have the kind of need it claims to have, or, at least, "that existing carriers are able to meet it." (CF Br., pp. 29, 32-33, 35; ATA Br., pp. 15, 22.) AFL respectfully submits that these arguments are pure and simple afterthought.

In assessing these arguments, it is important to keep in mind the purpose of the specific ICC rules that the district court found to have been violated. As appellees state (CF Br., p. 20), the purpose of that portion of the ICC's temporary authority rules relating to the content of supporting-shipper statements, 49 C.F.R. § 1131.2(c), is to "insure the disclosure of information relevant to the statutory standards".

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[18] This is made clear in the application of appellee Navajo, referred to above. Navajo stated:

> We are aware that the Department of Defense is currently supporting not only Navajo but numerous other carriers and non-carriers for broad extensions of operating authority to serve DOD transportation requirements on a point to point single-line basis over the shortest available routes. It is our belief that the carriers chosen to receive such authority should be experienced, reliable carriers with broadly based operations.

Verified Statement of David N. Inwood, p. 3, Docket No. MC-76032 (Sub-No. 240).

There are two standards set forth in section 210a of the Interstate Commerce Act, 49 U.S.C. § 310a, for granting temporary authority: First, the shipper must have an immediate and urgent need for the proposed service; second, the proposed service must be unavailable from existing carriers.

Subsections (8) and (9) of the rules, the specific sections in issue on these appeals, have a very limited purpose: They deal only with the availability of the proposed service from carriers other than the applicant. They do not bear at all on the question of the shipper's need for the proposed service or the immediacy or urgency of that need. Information relating to the "need" standard is covered by subsections (1) through (7).

It is clear, therefore, that appellees state the case too broadly when they contend that the alleged violation of subsections (8) and (9) prejudiced their ability to contest the Department's assertion of an immediate and urgent need. At worst, a failure to provide the information required by these subsections could only prejudice their ability to contest the Department's assertions relating to the unavailability of the proposed service from existing carriers. Thus, the critical question in determining whether appellees were prejudiced is whether the Department's statement provided sufficient information to enable appellees to show that they were able to provide the proposed service.

We submit that appellees could not conceivably have had any uncertainty as to the contentions they had to meet, or any misapprehension as to the nature of the Department's criticism of the existing pattern of motor carrier authority. On at least three occasions in this

record the Department made clear that its support for AFL was premised not upon "service failures," but upon the Department's desire to upgrade the quality and reduce the cost of the motor transportation service available to it through the certification of direct single-line service.[19] The Department also made clear on these occasions that AFL, in operations under its exemption, had demonstrated the superiority of direct single-line service, and that the immediacy and urgency of its need for certification of AFL's service was occasioned by the passage of legislation restricting AFL's exemption and by the entry of injunctions against AFL.[20]

Appellees' awareness that these were the premises of the Department's support for AFL's application is evidenced by their own concurrent applications for similar authority.[21] Each of these applications was based upon the Defense Department's need for improved service, and each was supported by the Department on grounds substantially identical to those on which AFL's application was supported. For these

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[19] This position was first stated in the Department's letter to the ICC in May 1968 informing the Commission of its support for AFL. (A. 14a) It was reiterated in June 1968 by an Assistant Secretary of Defense in rejecting ATA's request that the Department retract its support for AFL. (A. 139a) Finally, it was spelled out at length in the sworn statement of support filed after the ICC reopened the record. (A. 194a, 209a)

[20] As we have noted, discontinuance of an existing service is one of the grounds set forth in ICC regulations as justifying a grant of temporary authority. 49 C.F.R. § 1131.4(b)(2).

[21] Consolidated's application, to which we referred above, was filed with the ICC on November 24, 1968—only four days after the Defense Department filed its final statement of support for AFL in this case. 33 Fed. Reg. 18461. Other similar applications were filed in May and September 1968, prior even to the reopening of the record by the ICC. See Appendix A.

carriers now to suggest that the Department's statements in this case did not provide sufficient detail to enable them to defend themselves is sheer nonsense.

The problem appellees were faced with in this case was *not* a lack of specific detail in the evidence against them. Their problem was that in choosing to pursue fundamentally inconsistent courses before the ICC they had to contradict evidence that they themselves were relying on in other proceedings.

III. Appellees' Concept of an "Indivisible" Jurisdiction Is Inapposite in This Case

Appellees's argument that the ICC lost jurisdiction to reconsider or reopen the case before it once the complaint was filed in the court below is based upon a concept of "indivisible" jurisdiction that has no application whatsoever to the facts of this case.

At the outset we note that the briefs filed by appellees completely fail to mention the principal case relied upon by AFL—this Court's decision in *Oklahoma Natural Gas Co.* v. *Russell*, 261 U.S. 290 (1923). That case clearly established the principle that the jurisdiction of a district court may be invoked prior to the completion of an administrative proceeding in order to obtain interlocutory relief from an agency order that is about to take effect.[22] Appellees frankly concede that it was the ICC's refusal to stay its grant of

[22] Neither do appellees mention the other cases cited by AFL (Br., pp. 44-45) showing that it is an established procedure in ICC cases for parties before the Commission to seek anticipatory judicial relief pending final action on the merits by the Commission. The procedure is established with respect to other agencies, as well. *See West Indian Fruit & S.S. Co.* v. *Seatrain Lines*, 170 F.2d 775 (2d Cir. 1948), *cert. denied*, 336 U.S. 908 (1949) (temporary injunction granted enjoining effectiveness of rate pending action by Federal Maritime Commission on complaint before it).

authority to AFL pending action on their petitions for reconsideration that caused them to seek relief from the court below (CF Br., p. 11), and notwithstanding their elaborate efforts at *post hoc* rationalization,[23] the record shows that they clearly understood that the administrative proceeding had *not* been completed when they sought a stay from the district court. Thus, this case plainly presented a situation in which a "divisible" jurisdiction has long been recognized.[24]

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[23] The suggestion in the CF Brief (p. 60, n. 29) that the petitions for reconsideration were merely "precautionary"—that is, were filed simply to guard against an argument by AFL that they were *required* to be filed—is a masterpiece of afterthought. There is not the slightest suggestion in these petitions that the petitioners believed their petitions to be either unauthorized or unnecessary.

Indeed, the first time the contention that the petitions were unauthorized appears to have been asserted was in the Supplemental Complaint filed in the court below on December 31, 1968—*after* the ICC had reopened the proceeding and granted new temporary authority to AFL. The Supplemental Complaint does *not* allege that the petitions were "precautionary," as appellees intimate here, but that they were filed "under the erroneous assumption" they were authorized. (A. 373a.)

ATA's assertion that after the complaint was filed "Appellees remained steadfast in their conviction that the court assumed exclusive jurisdiction" (ATA Br., p. 25), is belied by its own pleadings before the ICC. In its motion to vacate the Commission's order of November 5, 1968 reopening the record, ATA expressly pointed out that the petitions for reconsideration "are presently pending before the Commission." (A. 172a). That motion makes not the slightest mention of what ATA now claims was an "exclusive jurisdiction" in the court.

[24] The "divisible" jurisdiction of a reviewing court has been recognized in other areas. As we pointed out in our main brief (p. 46) it has been held that the Federal Communications Commission may entertain petitions for reconsideration notwithstanding the fact that nonpetitioning parties have already sought judicial review on the merits. *Wrather-Alvarez Broadcasting, Inc.* v. *FCC*, 248 F. 2d 646 (D.C. Cir. 1957). None of the appellees discusses this case.

Moreover, even if the "exclusive jurisdiction" analysis is to be taken seriously, one still must pinpoint the mystical moment at which jurisdiction "passes" from agency to court. As the *Oklahoma Natural Gas* case makes plain, that moment is *not* at the filing of a complaint in the district court—at least when proceedings before the agency have not been completed. If analogy is to be drawn to review proceedings involving other administrative agencies, as appellees argue (CF Br., pp. 53-54), then the critical event should be the filing of the record. Although appellees cite *Ford Motor Co.* v. *NLRB*, 305 U.S. 364 (1939) for the proposition that the agency must obtain permission of the reviewing court to reopen the administrative proceeding, that case in fact involved a reopening *after* the record had been filed in court. This Court expressly recognized there that the agency retained authority to modify its order *until* the record was filed. 305 U.S. at 368.

If, as appellees intimate (ATA Br., pp. 15-16), the evil to be avoided in a situation such as this is action by the agency that is "inconsistent" with the court's jurisdiction, that purpose is clearly served by terminating the agency's authority to reopen when the record is filed in court. This Court has stated that "findings of the [Interstate Commerce] Commission may not be assailed upon appeal in the absence of the evidence upon which they were made." *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 286 (1934). Thus, since the reviewing court cannot address itself to the merits of the agency decision until the record is before it, there is clearly no opportunity for inconsistent action by the agency prior to that time. As we have already noted, the agency record in

this case was not filed in the district court for more than a month *following* the ICC's decision on the reopened record.[25]

Finally, the "prejudice" appellees claim to have suffered by reason of the ICC's reopening of the record without leave of court is highly speculative, to say the least. It consists of the mere possibility that the court might have denied reopening or imposed "safeguards" on the ground that the ICC was wrongfully attempting to "shore up its position in court." (CF Br., p. 47)

There are two difficulties with this ingenious afterthought. First, when the Commission moved the district court to stay its proceedings pending reopening of the case before the ICC (A. 167a), appellees raised none of these contentions. Their 14-page brief in opposition (R. 108) argued only that the court had jurisdiction and the ICC did not. It apparently did not occur to appellees at that time that the ICC was attempting to "shore up its position," or that "safeguards" were needed. Nor did it occur to appellees

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[25] This case clearly did not involve any such procedural inconsistency or inconvenience as was presented in *Arrow Transp. Co.* v. *United States*, 176 F.Supp. 411 (N.D. Ala. 1959), *aff'd*, 361 U.S. 353 (1960) (hearings before court and ICC scheduled 7 days apart), or *Atchison, T. & S.F. Ry.* v. *United States*, 231 F.Supp. 422, 426 (N.D. Ill. 1964) (briefing and hearing schedule fixed by court prior to reopening by ICC).

No dates for the filing of briefs or for hearing the case on the merits had been fixed at the time the ICC reopened its proceeding. Indeed, most of the appellees were not even parties to the case at the time the Commission reopened. The railroads did not intervene until November 14, 1968; Yellow Freight intervened on January 6, 1969; Tri-State and Consolidated Copperstate intervened on January 14, 1969; and 13 others of the 23 carriers that have joined in the ATA brief intervened on January 20, 1969—a month *after* the ICC rendered its second order. (A. 3a-6a)

then to ask the court to enjoin the reopening or otherwise impose conditions to protect appellees' interests.[20] The claim of "prejudice" is thus somewhat belated.

Second, appellees have offered no evidence whatsoever to indicate that the Commission was indeed acting as a "litigant" or was otherwise unfair in its handling of the reopened proceedings. They simply assert that this was a "risk". In fact, a substantial volume of additional evidence was submitted to the ICC by protesting carriers following the reopening (A. 210a-363a), and it cannot be assumed that the Commission simply ignored it. In the absence of clear indication to the contrary, the presumption of regularity must control. *Cf.* 2 Davis, *Administrative Law Treatise* § 11.06 (1958).

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[20] Since the ICC had already ordered the reopening when its motion and appellees' opposition were filed in the court below, it would have been a simple matter for appellees to have requested a restraining order against the Commission. Such an order was sought and granted in *Arrow Transp. Co.* v. *United States*, 176 F.Supp 411 (N.D. Ala. 1959), *aff'd* 361 U.S. 353, a case that presented the possibility of "conflict" between the ICC and the district court.

CONCLUSION

For the foregoing reasons and for the reasons set forth in AFL's main brief, the judgment of the district court should be reversed.

Respectfully submitted,

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APPENDIX A

Summary of Applications Filed by Certain Appellees with Defense Department Support

Name of Appellee	ICC Docket No.	Date Application Filed	Summary of Authority Sought
Consolidated Freightways Corp. of Delaware	MC-42487 (Sub-No.705)	November 24, 1968	authority to provide direct single-line transportation of explosives to or from military installations in a 41-state area
Garrett Freight Lines, Inc.	MC-263 (Sub-No.185)	September 16, 1968	authority to provide direct single-line transportation of explosives in a 12-state area
IML Freight, Inc.	MC-33641 (Sub-No.80)	December 8, 1968	authority to provide direct single-line transportation of explosives in a 26-state area
Navajo Freight Lines, Inc.	MC-76032 (Sub-No.233)	January 10, 1969	authority to provide direct single-line transportation of general commodities moving on Government Bills of Lading in a 15-state area
Navajo Freight Lines, Inc.	MC-76032 (Sub-No.238)	February 24, 1969	authority to provide direct single-line transportation of explosives in a 13-state area
Navajo Freight Lines, Inc.	MC-76032 (Sub-No.240)	April 7, 1969	authority to provide direct single-line transportation of general commodities moving on Government Bills of Lading in a 28-state area
Pacific Intermountain Express	MC-730 (Sub-No.296)	May 9, 1968	authority to provide direct single-line transportation of explosives in a 25-state area

Name of Appellee	ICC Docket No.	Date Application Filed	Summary of Authority Sought
Riss International Corp.	MC-200 (Sub-No.228)	May 15, 1969	authority to provide direct single-line transportation of general commodities moving on Government Bills of Lading in a 37-state area
J. H. Rose Truck Line, Inc.	MC-13250 (Sub-No.101)	January 13, 1969	authority to provide direct single-line transportation of commodities requiring the use of special equipment, and ammunition and explosives, to and from all military installations in the United States
Tri-State Motor Transit Co.	MC-109397 (Sub-No.164)	November 11, 1968	authority to transport explosives in three additional states to enable provision of direct single-line service
Western Gillette, Inc.	MC-8948 (Sub-No.83)	January 6, 1969	authority to eliminate circuity in transporting explosives
J. J. Willis Trucking Co.	MC-107993 (Sub-No. 15)	February 28, 1969	authority to provide direct single-line transportation of commodities requiring special equipment, ordinance equipment and quartermaster supplies to or from military installations in a 13-state area